

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 30

VOCATIONAL REHABILITATION PROGRAM

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Subchapter 1

Determination of Rehabilitation
Potential and Eligibility

37.30.101 DEFINITIONS (1) "Applicant" means a person who has made formal application to the department to receive vocational rehabilitation or other services administered by the Montana vocational rehabilitation program inclusive of the blind and low vision services program of the department.

(2) "Blindness" means a visual disability as defined at 53-7-301, MCA.

(3) "Consumer" means a person who has been determined by the department in accordance with these rules and state and federal statutes and federal regulations pertaining to vocational rehabilitation services, and other applicable laws, to be eligible to receive vocational services administered by the Montana vocational rehabilitation program and who is receiving services in accordance with an individualized plan for employment (IPE).

(4) "Department" means the department of public health and human services.

(5) "Dependent" means any relative to a person by blood or marriage or anyone living in the same household with whom a person has a close interpersonal relationship and for whom a person provides a majority of their financial support.

(6) "Disability" means an existing physical or mental impairment including blindness which significantly limits, or, if not corrected, may significantly limit a person's activities or ability to function in a normal manner.

(7) "Extended employment" means a supervised work program as defined at 53-7-202, MCA.

(8) "Financial resource" means financial assets, inclusive of stocks, bonds, certificates of deposit and similar type assets, that can be readily converted to cash, available to the person at the time of the eligibility determination and during the course of the person's receipt of services under an IPE. Financial assets do not include resources as provided for in ARM

37.30.411.

(9) "Income" means income as defined in ARM 37.2.702.

(10) "Independent living plan" means the written individualized independent living plan (IILP) prepared by the department for persons receiving independent living rehabilitation services. This plan specifies the independent living goals and needs of the person and the services the department may provide to the person in order to assist the person attaining an improved quality of life.

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(11) "Individualized plan for employment (IPE)" means the plan signed by the person and the qualified Montana vocational rehabilitation counselor which specifies the vocational rehabilitation goals and needs of the consumer and the services the department may provide to the consumer in order to assist the vocational rehabilitation of the consumer.

(12) "Montana vocational rehabilitation program (MVR)" means the program of federal and state authorized vocational rehabilitation services for persons with disabilities provided through the department's disability services division, inclusive of the blind and low vision services program and those federal programs authorized at 29 USC 701, et seq.

(13) "Occupational license" means a license as defined at 53-7-101 and 53-7-301, MCA.

(14) "Orthotic device" means a device that activates or supplements a weakened limb or neuromuscular function.

(15) "Person with a most significant disability" means a person with a disability:

(a) who has a severe physical or mental impairment that seriously limits three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome;

(b) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(c) who has:

(i) one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle

cell anemia, specific learning disability, end-stage renal disease or another disability; or

(ii) a combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

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(16) "Person with a significant disability" means a person with a disability:

(a) who has a severe physical or mental impairment that seriously limits at least one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome;

(b) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(c) who has:

(i) one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease or another disability; or

(ii) a combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(17) "Programs of higher education" are programs of formal education that lead to an advanced academic degree such as an A.A., A.S., B.A., B.S., M.A. or Ph.D. Programs of higher education do not include career, vocational, or other specialized programs that do not lead to an academic degree.

(18) "Prosthetic appliance" means an artificial device as defined at 53-7-101 and 53-7-301, MCA.

(19) "Rehabilitation facility" or "rehabilitation program" means a facility or program operated primarily for the provision of vocational rehabilitation services to persons with

disabilities.

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(20) "Serious limitation" or "seriously limits" means a reduction in capacity due to severe physical or mental impairment to the degree that the person requires vocational rehabilitation services or accommodations not typically made for other persons in order to prepare for, secure, retain or regain employment.

(21) "Sheltered employment" means a program of services as defined at 53-7-202, MCA.

(22) "Support services" means support services as defined at 53-7-202, MCA.

(23) "Vocational rehabilitation services" means vocational rehabilitation services provided in 34 CFR 361.48. Vocational rehabilitation services for the purposes of subchapters 1 through 7 do not include vocational rehabilitation extended employment services, independent living rehabilitation services and visual medical services as defined in this chapter. (History: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315 and 53-19-112, MCA; IMP, Sec. 53-7-101, 53-7-103, 53-7-105, 53-7-106, 53-7-107, 53-7-108, 53-7-109, 53-7-201, 53-7-202, 53-7-203, 53-7-204, 53-7-205, 53-7-206, 53-7-301, 53-7-302, 53-7-303, 53-7-306, 53-7-310, 53-7-314, 53-7-315, 53-19-101, 53-19-102, 53-19-103, 53-19-104, 53-19-105, 53-19-106, 53-19-110 and 53-19-112, MCA; NEW, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1985 MAR p. 1569, Eff. 10/18/85; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02; AMD, 2004 MAR p. 1789, Eff. 8/6/04.)

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VOCATIONAL REHABILITATION PROGRAM

37.30.102

37.30.102 VOCATIONAL REHABILITATION POLICY: INCORPORATION
BY REFERENCE OF FEDERAL AND STATE AUTHORITY

(1) The department, except as otherwise provided in this chapter, adopts and incorporates by reference, for purposes of administering the program of vocational rehabilitation services, the federal regulations specified in (2) as presented in the July 1, 2004 edition of the Code of Federal Regulations (CFR). These federal regulations, adopted by the United States department of education, govern the administration and delivery by the states of various aspects of vocational rehabilitation services.

(2) The following federal regulations govern the administration and delivery of vocational rehabilitation services as specified:

(a) For purposes of generally administering the program:

(i) 34 CFR 361.5 - "Applicable definitions".

(b) For purposes of administering eligibility determinations and order of selection:

(i) 34 CFR 361.36 - "Ability to serve all eligible individuals; order of selection".

(ii) 34 CFR 361.41 - "Processing referrals and applications".

(iii) 34 CFR 361.42 - "Assessment for determining eligibility and priority for services".

(iv) 34 CFR 361.43 - "Procedures for ineligibility determination".

(v) 34 CFR 361.44 - "Closure without eligibility determination".

(c) For purposes of administering program information and the provision of referrals:

(i) 34 CFR 361.37 - "Information and referral services".

(d) For purposes of administering confidential personal information:

(i) 34 CFR 361.38 - "Protection, use and release of personal information".

(e) For purposes of implementing individualized planning for service delivery and record of services:

(i) 34 CFR 361.45 - "Development of the individualized plan for employment".

(ii) 34 CFR 361.46 - "Content of the individualized plan for employment".

(iii) 34 CFR 361.47 - "Record of services".

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(f) For purposes of the administration of service delivery:

(i) 34 CFR 361.48 - "Scope of vocational rehabilitation services for individuals with disabilities".

(g) For purposes of the implementation of informed choice for the benefit of consumers:

(i) 34 CFR 361.52 - "Opportunity to make informed choice".

(h) For purposes of prior and verbal authorization:

(i) 34 CFR 361.50(e) - "Written policies governing the provision of services for individuals with disabilities".

(i) For purposes of assuring the prior use of comparable services and benefits by consumers:

(i) 34 CFR 361.53 - "Comparable services and benefits".

(j) For purposes of administering closure of consumers from the program and monitoring employment outcomes for consumers:

(i) 34 CFR 361.55 - "Annual review of individuals in extended employment of other employment under special certificate provisions of the Fair Labor Standards Act".

(ii) 34 CFR 361.56 - "Requirements for closing the record of services of a consumer who has achieved an employment outcome".

(iii) 34 CFR 363.11 - "What information and assurances must be included in the state plan supplement".

(iv) 34 CFR 363.54 - "What requirements must a state meet before it provides for the transition of a consumer to extended services".

(k) For purposes of providing consumers with due process:

(i) 34 CFR 361.57 - "Review of counselor or counselor

coordinator decisions".

(3) The department, except as otherwise provided in this chapter, adopts and incorporates by reference, for purposes of administering the program of vocational rehabilitation services, the policies specified in (4), as presented in the Montana Vocational Rehabilitation Policy Manual. Copies of the policies may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

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(4) The following Montana vocational rehabilitation policies govern the administration and delivery of vocational rehabilitation services as specified:

(a) For purposes of selecting appropriate goods: Montana Vocational Rehabilitation Policy B - "Rates Of Payment" dated December 27, 2002.

(b) For purposes of staff and consumer safety: Montana Vocational Rehabilitation Policy C1 - "Personal Safety" dated December 27, 2002.

(c) For purposes of conciliation in consumer due process: Montana Vocational Rehabilitation Policy E - "Counselor Determinations" dated December 27, 2002.

(d) For purposes of self-employment service provision: Montana Vocational Rehabilitation Policy M1 - "Self-employment" dated December 27, 2002.

(e) For purposes of defining "emancipated adult" for financial eligibility determinations: Montana Vocational Rehabilitation Policy ZGD08 - "Definitions" dated December 27, 2002.

(f) For purposes of defining "individual with a most significant disability" for federal reporting and order of selection: Montana Vocational Rehabilitation Policy ZGD16 - "Definitions" dated December 27, 2002.

(g) For purposes of developing the IPE: Montana Vocational Rehabilitation Policy W - "Core Requirements of IPE" dated December 27, 2002.

(h) For purposes of emergency response to IPE change requests: Montana Vocational Rehabilitation Policy X - "On-

going IPE Services" dated December 27, 2002. (History: 53-7-102, 53-7-206, 53-7-302, 53-7-315, MCA; IMP, 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-108, 53-7-203, 53-7-205, 53-7-302, 53-7-303, 53-7-306, 53-7-310, 53-7-314, MCA; NEW, 2002 MAR p. 3628, Eff. 12/27/02; AMD, 2005 MAR p. 2257, Eff. 11/11/05.)

Rules 03 and 04 reserved

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VOCATIONAL REHABILITATION PROGRAM 37.30.106

37.30.105 VOCATIONAL REHABILITATION PROGRAM:
IMPLEMENTATION OF REHABILITATION ACT OF 1973 (1) The Administrative Rules of Montana at Title 37, chapter 30, subchapters 1 through 26 implement for the state of Montana the federal program of vocational rehabilitation services for persons with disabilities, codified at 29 USC 701 et seq. (1992).

(2) The administration of the vocational rehabilitation program, implemented by the Administrative Rules of Montana at Title 37, chapter 30, subchapters 1 through 26, is subject to the provisions of all federal statutory, regulatory or policy authorities that govern the administration of the program. Any provision in these rules that is contrary to a governing federal authority is preempted by the pertinent federal authority. (History: Sec. 53-7-102 and 53-7-315, MCA; IMP, Sec. 53-7-103 and 53-7-303, MCA; NEW, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040.)

37.30.106 VOCATIONAL REHABILITATION PROGRAM: EMPLOYMENT GOALS (REPEALED) (History: Sec. 53-7-102 and 53-7-315, MCA; IMP, Sec. 53-7-108 and 53-7-310, MCA; NEW, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

Rules 07 through 10 reserved

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VOCATIONAL REHABILITATION PROGRAM 37.30.111

37.30.111 VOCATIONAL REHABILITATION PROGRAM: ORDER OF SELECTION (1) The department, in consultation with the vocational rehabilitation council, may implement an order of selection to limit eligibility for vocational rehabilitation services based upon designation by characteristics of specific populations of persons as having priority in being screened for eligibility and in receipt of services.

(2) The categories and ranking for priority of service among applicants and persons otherwise eligible for services are as follows:

(a) priority one is eligible persons with most significant disabilities experiencing serious limitations in four or more functional capacities;

(b) priority two is eligible persons with most significant disabilities experiencing serious limitations in at least three functional capacities who are not in priority one;

(c) priority three is eligible persons with significant disabilities experiencing serious limitations in at least two functional capacities who are not in priority one or two; and

(d) priority four is all other eligible persons with disabilities who are not in priorities one, two or three.

(3) Selection of persons to be screened for eligibility within each priority group is based on the earliest dated application.

(4) Implementation of an order of selection does not

affect the status for receipt of services for a person who has been previously determined to be eligible for vocational services and who is receiving vocational rehabilitation services through an IPE prior to the date on which an order of selection is implemented. (History: Sec. 53-7-102 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-302 and 53-7-303, MCA; NEW, Eff. 6/4/77; AMD, 1980 MAR p. 595, Eff. 2/15/80; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02.)

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Subchapter 3

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37.30.301 VOCATIONAL REHABILITATION PROGRAM: APPLICATION (REPEALED) (History: Sec. 53-7-102 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-303, 53-7-306 and 53-7-315, MCA; NEW, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

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VOCATIONAL REHABILITATION PROGRAM 37.30.304

37.30.304 VOCATIONAL REHABILITATION PROGRAM:
DETERMINATION OF ELIGIBILITY (1) A person is eligible for vocational rehabilitation services, if the department determines the person to be eligible in accordance with the criteria of this subchapter and subchapters 4 and 7, governing eligibility, and with the criteria adopted in applicable federal law and regulations.

(2) An applicant may receive those services determined by the department to be necessary and appropriate for assessing the applicant's eligibility.

(3) Eligibility of a person for the receipt of visual medical services, vocational rehabilitation extended employment services and independent living services is determined in accordance with ARM 37.30.2601 et seq. for visual medical services, ARM 37.30.1602 et seq. for vocational rehabilitation extended employment services and ARM 37.30.1601 et seq. for independent living services. (History: Sec. 53-7-102, 53-7-203, 53-7-302, 53-7-315 and 53-19-112, MCA; IMP, Sec. 53-7-101, 53-1-102, 53-7-103, 53-7-105, 53-7-106, 53-7-107, 53-7-201, 53-7-202, 53-7-203, 53-7-301, 53-7-302, 53-7-306, 53-7-309 and 53-19-103, MCA; NEW, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1985 MAR p. 1569, Eff. 10/18/85;

AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02.)

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37.30.305 VOCATIONAL REHABILITATION PROGRAM: ELIGIBILITY CRITERIA (1) Vocational rehabilitation services, except those services necessary for determining eligibility for the program, are available only to a person who is determined by the department to be eligible for services.

(2) Eligibility for vocational rehabilitation services is based on the following criteria:

(a) the presence of physical or mental impairment;

(b) the person's impairment constituting or resulting in a substantial impediment to the person's employment; and

(c) the vocational rehabilitation services necessary for the person to prepare for, secure, retain or regain employment are consistent with the person's unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

(3) Any applicant who has been determined eligible for social security old age, survivors and disability insurance (OASDI) or supplemental security income (SSI) benefits under Titles II and XVI of the Social Security Act is presumed eligible for vocational rehabilitation services and considered

an individual with a significant disability unless the department determines the applicant is not otherwise eligible for services.

(4) Eligibility of a person for the visual medical services, vocational rehabilitation extended employment services and independent living services is determined in accordance with ARM 37.30.2608 for visual medical services, ARM 37.30.1613 for vocational rehabilitation extended employment services and ARM 37.31.401 for independent living services.

(5) Eligibility for vocational rehabilitation services is not determined:

(a) with regard to sex, race, age, religion, creed, color, or national origin;

(b) solely on the basis of type of disability;

(c) upon an age limit which will, of itself, result in a finding of ineligibility for any person who otherwise meets the basic eligibility requirements; or

(d) upon a residence requirement, durational or other, which excludes from services any person who is in the state and who would be eligible for vocational rehabilitation services otherwise.

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37.30.305

(6) A person is not eligible for vocational rehabilitation services unless the department determines that the person is utilizing all public and private benefits and services, other than rehabilitation technology, to which the person may be otherwise entitled which are of a comparable nature to those available through the vocational rehabilitation program of the department.

(7) A consumer must participate in such vocational rehabilitation services as the consumer and the department determine are appropriate for the consumer's vocational rehabilitation in accordance with the objectives of the consumer's (IPE). (History: Sec. 53-7-102, 53-7-203, 53-7-302, 53-7-315 and 53-19-112, MCA; IMP, Sec. 53-7-101, 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-107, 53-7-201, 53-7-202, 53-7-203, 53-7-301, 53-7-302, 53-7-303, 53-7-304, 53-7-305, 53-7-306, 53-7-307, 53-7-308, 53-7-309 and 53-19-103, MCA; NEW, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1985 MAR p. 1569, Eff. 10/18/85; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p.

3628, Eff. 12/27/02.)

Rules 06 through 09 reserved

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VOCATIONAL REHABILITATION PROGRAM 37.30.310

37.30.310 VOCATIONAL REHABILITATION PROGRAM: EXTENDED
EVALUATIONS (REPEALED) (History: Sec. 53-7-102, 53-7-302 and
53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108,
53-7-205, 53-7-303, 53-7-306 and 53-7-310, MCA; NEW, 1982 MAR p.
1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS,
from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff.
12/27/02.)

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VOCATIONAL REHABILITATION PROGRAM 37.30.401

Subchapter 4

Determination of Economic Need

37.30.401 VOCATIONAL REHABILITATION PROGRAM: PURCHASE OF SERVICES (1) The department, as provided in this subchapter, may expend monies for the purchase of vocational rehabilitation services for persons who are applicants seeking to be determined eligible for vocational rehabilitation services or who have been determined to be eligible to be consumers of vocational rehabilitation services. (History: Sec. 53-7-102 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310, MCA; NEW, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; AMD, 1996 MAR p. 1320, Eff. 5/10/96; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2004 MAR p. 1789, Eff. 8/6/04.)

Rules 02 and 03 reserved

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ADMINISTRATIVE RULES OF MONTANA

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VOCATIONAL REHABILITATION PROGRAM

37.30.404

37.30.404 VOCATIONAL REHABILITATION PROGRAM: ADAPTATIONS OF FINANCIAL NEED STANDARD (1) The department may, within its discretion, use adaptations of the financial need standard where the situation of a client is one of special circumstances which are subject to objective definition by documentation. These objectively defined circumstances include: variations in need due to special needs accompanying designated types of disabilities; variations in need based on the nature of living requirements in different localities; variations in need based on the nature of living requirements caused by particular rehabilitative services to be provided; and variations in need due to short periods of medical care for acute physical and mental conditions arising during the course of vocational rehabilitation. The department will direct the exercise of this

discretion and determine the circumstances in which it may be utilized. (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-303, 53-7-306 and 53-7-310, MCA; NEW, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040.)

ADMINISTRATIVE RULES OF MONTANA

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37-6483

37.30.405

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

37.30.405 VOCATIONAL REHABILITATION PROGRAM: PAYMENT FOR SERVICES (1) The consumer, except as otherwise specifically authorized in this subchapter, is responsible for paying the costs for the provision of any vocational rehabilitation services that are authorized to be provided to the consumer through the consumer's IPE.

(2) An applicant or a consumer is not responsible for paying the costs for the provision of the following vocational rehabilitation services:

(a) assessment for determining eligibility and priority for vocational rehabilitation services except for trial work

experience type services provided to a person with a significant disability during an exploration of the person's abilities, capabilities and capacity to perform in work situations;

(b) vocational rehabilitation counseling and guidance;

(c) referral and related services;

(d) job development and placement related services;

(e) personal assistance services; and

(f) any auxiliary aid or service or other rehabilitation technology, including reader services, that the department determines a person with a disability may require in order to apply for or receive vocational rehabilitation services.

(3) A consumer who is eligible for social security old age, survivors and disability insurance (OASDI), or supplemental security income (SSI) benefits under Titles II and XVI of the Social Security Act is not responsible for paying the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE.

(4) The department may pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that the consumer's income and financial resources, determined as provided in this rule and ARM 37.30.407, do not exceed the maximum amounts allowable for income and for financial resources calculated by the department as provided for in (4)(a) and (b).

(a) The maximum allowable level for income is a prospective 12 month annual income calculated at 250% of the 2005 U.S. department of health and human services poverty guidelines for households of different sizes.

(b) The maximum allowable value for financial resources is calculated at 50% of the maximum allowable annual income level.

(5) The department does not pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that those costs are reimbursable through another governmental program or there is another source of funding that is available to be applied to the costs of all or a portion of the services.

(a) If benefits from any other program or other sources of funding are not immediately available for the payment of any or all of the costs of services for the consumer, the department may temporarily pay for the costs for the provision of services

until those other benefits or other sources of funding become available.

(b) If the determination of the availability of benefits or other sources of funding would delay the provision of vocational rehabilitation services to a consumer who is at extreme medical risk or who is to receive an immediate job placement opportunity, the department may temporarily pay for the costs for the provision of services until those other benefits become available. The department makes the determination of extreme medical risk based upon medical evidence provided by an appropriate licensed professional.

(6) The responsibility of a consumer for the payment of the costs for the provision of services is initially determined by the department prior to the provision to the consumer of any services listed in the consumer's IPE.

(a) The financial responsibility of a consumer is redetermined at any time that there is a change in the income and resources available to the consumer. (History: 53-7-102, 53-7-206, 53-7-315, MCA; IMP, 53-7-102, 53-7-105, 53-7-108, 53-7-310, MCA; NEW, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1996 MAR p. 1320, Eff. 5/10/96; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02; AMD, 2004 MAR p. 1789, Eff. 8/6/04; AMD, 2005 MAR p. 2257, Eff. 11/11/05.)

37.30.406 VOCATIONAL REHABILITATION PROGRAM: INFORMATION FOR DETERMINATION OF FINANCIAL NEED (1) The department may obtain information about an applicant's or a consumer's financial resources and requirements from the person or any other reliable source.

(2) An applicant's or a consumer's consent is necessary for the department to obtain any personal financial information

not otherwise available to the department under law.

(a) If an applicant or a consumer is an unemancipated minor, the consent of the person's parents or guardian is necessary for the department to obtain any personal financial information concerning the person or person's parents not otherwise available to the department under law.

(3) An applicant or a consumer who fails to provide necessary financial information to the department either directly or by consent to release cannot be determined by the department to be eligible for vocational rehabilitation services.

(4) In accordance with departmental policies, any financial or other information obtained with an applicant's or a consumer's consent or the consent of the person's parents is confidential.

(5) Any financial information relied upon by the department in determining an applicant's or a consumer's financial resources or financial requirements is available to the person upon the person's request.

(6) A consumer must report to the department any changes in income or resources. Failure to report changes in income or resources results in termination of the consumer's eligibility for the vocational rehabilitation services. (History: Sec. 53-7-102 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310, MCA; NEW, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1996 MAR p. 1320, Eff. 5/10/96; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2004 MAR p. 1789, Eff. 8/6/04.)

37-6486

9/30/04

ADMINISTRATIVE RULES OF MONTANA

VOCATIONAL REHABILITATION PROGRAM

37.30.407

37.30.407 VOCATIONAL REHABILITATION PROGRAM:
DETERMINATION OF INCOME AND FINANCIAL RESOURCES (1) An applicant's or a consumer's income and financial resources include, if married, that of the spouse and, if unemancipated, that of the parents or guardian.

(2) An applicant's or a consumer's income does not include

income expended on disability related medical, psychological or rehabilitation expenses incurred in the course of being determined eligible for vocational rehabilitation services and of the provision of vocational rehabilitation services.

(3) An applicant's or a consumer's income and financial resources are based on the person's next 12 months' projected income and financial resources.

(a) For an applicant or a consumer who is employed seasonally, income is calculated based on income history.

(b) For an applicant or a consumer who is self-employed, income does not include business expenses.

(4) The following assets are excluded as financial resources:

(a) the home of the applicant or consumer, the spouse or the parents, in the case of a minor;

(b) a small business or farm owned by the applicant or consumer, the spouse or the parents, in the case of a minor, if that business or farm is determined by the department to be the primary source of income or is a major asset for the applicant or consumer, the spouse or the parents;

(c) the applicant's or consumer's or the spouse's individual retirement accounts; and

(d) the applicant's or consumer's trust funds established as a result of disability to assist with the present and future medical and independent living expenses of the applicant or consumer. (History: Sec. 53-7-102 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310, MCA; NEW, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; AMD, 1996 MAR p. 1320, Eff. 5/10/96; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02; AMD, 2004 MAR p. 1789, Eff. 8/6/04.)

Rules 08 through 10 reserved

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ADMINISTRATIVE RULES OF MONTANA

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37-6487

VOCATIONAL REHABILITATION PROGRAM

37.30.411

37.30.411 VOCATIONAL REHABILITATION PROGRAM: INCOME AND RESOURCES (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-303, 53-7-306 and 53-7-310, MCA; NEW, 1982 MAR p. 1287,

Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; AMD, 1996 MAR p. 1320, Eff. 5/10/96; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

Rules 12 through 15 reserved

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VOCATIONAL REHABILITATION PROGRAM 37.30.416

37.30.416 VOCATIONAL REHABILITATION PROGRAM: PAYMENT OF
TUITION FOR HIGHER EDUCATION (1) Prior to a determination by

the department as to the amount of funding an individual should receive for the cost of tuition, an individual must apply for and pursue a federal Pell education grant.

(2) The department will only provide funding for the cost of tuition for a client at the program of higher education, community/junior college, vocational school, technical school or institute, or hospital school of nursing that the department determines is the most cost effective.

(3) The department, except as provided in (3)(a) and (b), provides funding for the cost of tuition for an individual at a public or private program of higher education up to but not exceeding the highest tuition charge in the Montana university system.

(a) The department provides funding for the cost of tuition to a program of higher education that is more expensive than the highest tuition in the Montana university system if the department determines that the program is not available otherwise or that the overall cost of attendance to the department inclusive of tuition, room and board, texts and supplies at the program with the more expensive tuition will be less than the overall cost of attendance at the program in the Montana university system.

(b) For tuition to a nationally recognized program, designed and staffed for persons with severe disabilities, the department provides funding for the cost of tuition. (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, 1992 MAR p. 2572, Eff. 11/26/92; AMD, 1996 MAR p. 1320, Eff. 5/10/96; TRANS, from SRS, 1998 MAR p. 2040.)

Subchapters 5 and 6 reserved

Subchapter 7

Nature and Scope of Services

37.30.701 VOCATIONAL REHABILITATION PROGRAM: AVAILABILITY OF SERVICES (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

37.30.702 VOCATIONAL REHABILITATION PROGRAM: SERVICES AVAILABLE TO APPLICANTS (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-103, 53-7-105, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

Rules 03 and 04 reserved

37.30.705 VOCATIONAL REHABILITATION PROGRAM: PERSONAL AND VOCATIONAL ADJUSTMENT SERVICES (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

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ADMINISTRATIVE RULES OF MONTANA

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37-6531

37.30.706 VOCATIONAL REHABILITATION PROGRAM: PHYSICAL AND MENTAL RESTORATION SERVICES

(1) Physical and mental restoration services, as described in the IPE, may be provided to the consumer in preparing for, securing, retaining or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns abilities, capabilities, interests, and informed choice of the consumer.

(2) Physical and mental restoration services are limited to those services that are specified in and provided in accordance with the provisions of the Montana Vocational Rehabilitation Manual (MVR) Policy M, regarding scope of MVR services.

(3) Physical and mental restoration services do not include medical services and procedures of an experimental nature.

(4) The department adopts and incorporates by this reference the vocational rehabilitation list of covered services dated December 27, 2002, and published by the department as Montana Vocational Rehabilitation Policy M, "Scope of Montana Vocational Rehabilitation Services", of the Montana Vocational Rehabilitation Policy Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. (History: 53-7-102, 53-7-206, 53-7-302, 53-7-315, MCA; IMP, 53-7-102, 53-7-103, 53-7-108, 53-7-303, 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02; AMD, 2005 MAR p. 2257, Eff. 11/11/05.)

Rules 07 through 09 reserved

VOCATIONAL REHABILITATION PROGRAM

37.30.710

37.30.710 VOCATIONAL REHABILITATION PROGRAM: TRAVEL AND MOVING SERVICES (1) Travel and moving services may be provided to an applicant or client when necessary for the person to receive the benefit of vocational rehabilitation services.

(a) Travel services may include, as necessary, transportation, meals and lodging during travel for a person and necessary attendants or escorts.

(b) Transportation, meals and lodging are reimbursed at cost or state per diem, whichever is lower.

(2) Moving services may be provided for a move necessary to the vocational rehabilitation of the client.

(a) Moving expenses are reimbursed at cost.

(3) Travel services are only available for out-of-state travel if the department determines that the travel is necessary to receive services that are not available in Montana. (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040.)

37.30.711

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

37.30.711 VOCATIONAL REHABILITATION PROGRAM: MAINTENANCE (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

37.30.712 VOCATIONAL REHABILITATION PROGRAM: PLACEMENT SERVICES (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1978 MAR p. 907, Eff. 6/24/78; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

37.30.713 VOCATIONAL REHABILITATION PROGRAM: VOCATIONAL ITEMS (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1978 MAR p. 907, Eff. 6/24/78; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

Rules 14 through 16 reserved

37.30.717 VOCATIONAL REHABILITATION PROGRAM: ASSISTIVE SERVICES FOR PERSONS WITH DISABILITIES (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

37.30.718 VOCATIONAL REHABILITATION PROGRAM: SERVICES TO FAMILY MEMBERS AND DEPENDENTS (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

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VOCATIONAL REHABILITATION PROGRAM

37.30.725

37.30.719 VOCATIONAL REHABILITATION PROGRAM: OTHER GOODS AND SERVICES (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

Rules 20 through 22 reserved

37.30.723 VOCATIONAL REHABILITATION PROGRAM: POST EMPLOYMENT SERVICES (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

37.30.724 VOCATIONAL REHABILITATION PROGRAM: COUNSELING AND GUIDANCE SERVICES (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

37.30.725 VOCATIONAL REHABILITATION PROGRAM: WORK ACTIVITY SERVICES (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, Eff. 1/3/77; AMD, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

Rules 26 through 28 reserved

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VOCATIONAL REHABILITATION PROGRAM 37.30.729

37.30.729 GUIDELINES AND STANDARDS FOR SERVICES PROVIDED BY CLIENTS (1) The department, in consultation with appropriate professional, trade, business, training and other organizations and institutions, may develop standards to serve as guidelines for the quality of services an individual may provide as an employee, contractor, tradesman, professional, or businessman while that person is a client of the department. (History: Sec. 53-7-102, MCA; IMP, Sec. 53-7-102 and 53-7-105, MCA; NEW, 1982 MAR p. 1287, Eff. 7/1/82; TRANS, from SRS, 1998 MAR p. 2040.)

37.30.730

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

37.30.730 VOCATIONAL REHABILITATION PROGRAM: PROVIDER FEES (1) The provision of vocational rehabilitation services by the department is subject to the following financial limitations.

(a) Services subject to rates of payment are as follows:

(i) payment for physical and mental restoration services is limited to those rates specified in Montana Vocational Rehabilitation Policy R, "Fee Schedule".

(ii) payment for hospital care is limited to those rates provided in the medical assistance rates of Title 37, chapter 86, subchapters 5 and 12 of the Administrative Rules of Montana; and

(iii) payment for hospital care from a hospital in another state is at the rates as established by that state's vocational rehabilitation agency.

(2) The department adopts and incorporates by this reference the vocational rehabilitation fee schedule, dated July 1, 2002, and published by the department as Montana Vocational Rehabilitation Policy R, "Fee Schedule", of the Montana Vocational Rehabilitation Policy Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. (History: 53-7-102, 53-7-203, 53-7-302, 53-7-315, MCA; IMP, 53-7-102, 53-7-105, 53-7-108, 53-7-203, 53-7-302, 53-7-303, 53-7-306, 53-7-307, 53-7-310, MCA; NEW, 1982 MAR p. 1287, Eff. 7/1/82; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02; AMD, 2005 MAR p. 2257, Eff. 11/11/05.)

Rules 31 and 32 reserved

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ADMINISTRATIVE RULES OF MONTANA

VOCATIONAL REHABILITATION PROGRAM

37.30.733

37.30.733 VOCATIONAL REHABILITATION PROGRAM:
INSTRUCTIONAL SERVICES FOR BLIND AND VISUALLY IMPAIRED
VOCATIONAL REHABILITATION CLIENTS (1) The department may
arrange for instructional services to blind and visually
impaired vocational rehabilitation clients.

(2) The department will not arrange for or provide
instructional services if it determines that due to the time and
distance involved, the services are not readily available at a
reasonable cost.

(3) The department may purchase the instructional services
if the department determines that the client has inadequate
financial resources with which to purchase those services.
(History: Sec. 53-7-102, 53-7-203 and 53-7-302, MCA; IMP, Sec.
53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303, MCA; NEW,
1984 MAR p. 511, Eff. 3/30/84; TRANS, from SRS, 1998 MAR p.
2040.)

ULES OF MONTANA 12/31/02
DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

37-6557

37.30.735 VOCATIONAL REHABILITATION PROGRAM: LICENSES AND FEES (REPEALED) (History: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA; NEW, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

37.30.736 VOCATIONAL REHABILITATION PROGRAM: WORK
ADJUSTMENT TRAINING (REPEALED) (History: Sec. 53-7-102, 53-7-
302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-108,
53-7-303 and 53-7-310, MCA; NEW, 1992 MAR p. 2572, Eff.
11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p.
3628, Eff. 12/27/02.)

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Subchapter 8

Special Services

37.30.801 GROUP SERVICES PROGRAM: AVAILABILITY OF SERVICES (1) The department provides a program of financial assistance for services to persons and modifications to facilities which may be expected to contribute substantially to the rehabilitation of a group of persons with disabilities some of whom are currently or potentially clients of the vocational rehabilitation program.

(2) A service will not be developed or facility modified solely for the purpose of directly benefiting any one person with a disability.

(3) Preference will be given to services or facilities with the potential of benefiting the largest number of persons with disabilities at a minimum cost to the department.

(4) Services are limited to:

(a) correction of a particular structural problem that constitutes a barrier to persons with disabilities;

(b) purchase of equipment that will serve equally and substantively a group of persons with disabilities;

(c) provision of transportation to a group of persons with disabilities; and

(d) provision of instructional materials to persons with disabilities.

(5) Group services are available only to the extent that the services are not otherwise available through other programs or are the financial responsibility of a facility by state or federal law.

(6) Group services assistance is available only for services and modifications that the department determines within its discretion are appropriate under the criteria of this rule and for which there is funding. (History: Sec. 53-7-102, 53-7-203 and 53-7-302, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-302 and 53-7-303, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040.)

Rules 02 through 04 reserved

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37.30.805 CERTIFICATION OF HANDICAPPED PERSONS FOR MINIMUM WAGE EXEMPTIONS (REPEALED) (History: Sec. 53-7-102, 53-7-203 and 53-7-302, MCA; IMP, Sec. 53-7-203, MCA; NEW, 1984 MAR p. 511, Eff. 3/30/84; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

Subchapter 9

Civil Rights

37.30.901 STATEMENT OF CIVIL RIGHTS COMPLIANCE

(1) Pursuant to the provisions of Title VI of the Civil Rights Act of 1964, and the regulations issued thereunder, the vocational rehabilitation services administered by the department will be conducted in such manner that no person is excluded from participation in, denied the benefits of, or subjected to discrimination under the services provided on the ground of race, color, national origin, sex, age, physical or mental disability, creed, marital status, or political affiliation.

(2) No person will on the ground of race, color, national origin, sex, age, physical or mental disability, creed, marital status, or political affiliation be denied any services, financial aid, or other benefits provided through the vocational rehabilitation services or be provided any service, financial aid, or other benefit which is different, or is provided in a different manner, from that provided to others through the services.

(3) Employees of the department, or of other agencies or organizations participating in the vocational rehabilitation program, will not be assigned caseloads or clientele on the basis of race, color, national origin, sex, age, creed, marital status, or political affiliation of the person being served.

(4) In making determinations of the types of activity to be included in the vocational rehabilitation services, geographical or other criteria or methods of administration will not be used which have the effect of subjecting individuals to discrimination because of their race, color, national origin, sex, age, physical or mental disability, creed, marital status, or political affiliation or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, sex, age, physical or mental disability, creed, marital status, or political affiliation.

(5) The department recognizes that its obligation to conduct the services in accordance with the requirements of the law and the regulations extends to all activities arising out of the provision of the services which are conducted by other agencies, institutions, organizations, or political

Subchapter 10

Standards For Facilities and Providers of Services

37.30.1001 STANDARDS FOR PROVIDERS: CERTIFICATION

(1) It is the policy of the department to use, whenever feasible, providers which are accredited or approved by an appropriate public authority or professional organization. Where this is not possible, the providers selected, whether public or private, are those that appear upon investigation to be the best adapted to render the specific services required. Providers will be chosen based upon the professional and technical qualifications of personnel, adequacy of equipment, and scope and quality of services rendered.

(2) The department purchases services for applicants and clients only from providers that meet the accreditation, certification, licensure or other requirements and criteria made applicable by law, accrediting body or determination of the department.

(3) A provider who fails to meet accreditation, certification, licensure or other requirements and criteria made applicable by law, accreditation body or determination of the department will lose certification as a provider. (History: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040.)

37.30.1002 STANDARDS FOR PROVIDERS: ENROLLMENT AS A PROVIDER OF PROGRAMS OR SERVICES (1) A provider of services for applicants or consumers of services provided through this chapter that is an incorporated corporation delivering a program of vocational rehabilitation, visual rehabilitation, extended employment services or independent living services in order to become enrolled with the department as qualified to be a provider must be accredited by the appropriate accrediting body as specified on the following list:

(a) for vocational rehabilitation facilities and similar providers, the standards of the commission of accreditation of rehabilitation facilities (CARF);

(b) for providers serving persons with visual disabilities, the standards of the national accrediting council (NAC) or of CARF; and

(c) for providers of independent living services, the standards of the national council on disability (NCD).

(2) Copies of the standards adopted and incorporated by reference in this rule may be obtained as follows:

(a) the CARF standards may be obtained by temporary loan from the department through the Department of Public Health and Human Services, Disability Services Division, P.O. Box 4210, Helena, MT 59604-4210 or by purchase from CARF, 4891 E. Grant Road, Tucson, AZ 85712; and

(b) the NAC standards may be obtained by temporary loan from the department through the Department of Public Health and Human Services, Disability Services Division, P.O. Box 4210, Helena, MT 59604-4210 or by purchase from NAC, 15 E. 40th Street, Suite 1004, New York, NY 10016.

(3) A provider of services, that in accordance with (1) must receive accreditation, may be provisionally enrolled by the department until the provider receives the appropriate accreditation. A provisional enrollment may not be for more than 18 months. A provider may not receive another provisional enrollment, consecutive with a prior provisional enrollment unless the department determines that the provisional reenrollment is necessary due to matters of process relating to the accreditation and that the provider is making a good faith effort to become accredited.

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(4) The department may enroll a provider of services that is not accredited as provided in (1), if the provider is necessary to the delivery of services to an applicant or consumer, and the provider is approved for the delivery of those services by a state or federal agency with which the department has a cooperative agreement concerning the coordinated delivery of services to a class of persons to which the person belongs.

(5) If enrollment is denied, the provider is notified of the reasons for such decision 30 days in advance of the date on which the department will cease to purchase services from the provider.

(6) The department provides for the enrollment of a provider upon receipt from the provider of records and reports attesting to its CARF or NAC accreditation. The duration of the enrollment by the department may be up to three years.

(a) The department, upon being apprised of any source of material change in the facility's functioning in terms of the standards or in terms of the failure of the facility to provide such records and reports as requested by the department, may review the facility's certification and may modify its certification decision. At the discretion of the department, such review may include an on site visit. (History: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303, MCA; NEW, Eff. 6/4/77; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; AMD, 1997 MAR p. 1204, Eff. 7/8/97; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02.)

Rules 03 through 05 reserved

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VOCATIONAL REHABILITATION PROGRAM 37.30.1007

37.30.1006 STANDARDS FOR PROVIDERS: ON SITE EVALUATION

(1) The department periodically evaluates the quality of services provided to department clients by providers. This is accomplished through personal visitations by representatives of the department, by written reports, by consultation with official accrediting agencies, and through other effective means. (History: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040.)

37.30.1007 STANDARDS FOR PROVIDERS: PROFESSIONAL PROVIDERS (1) Providers of professional services to applicants and clients must be licensed or certified in accordance with any state laws or regulations and professional standards applicable to the conduct of their profession and the delivery of their services.

(2) Specialty medical services may be rendered only by professionals qualified to perform the particular specialty service required.

(3) Training personnel for applicants or clients must meet qualifications that the department determines are necessary for satisfactory conduct of instructional services necessary to the specific training needed.

(4) Reimbursement is not available to a provider of services that the department determines does not have appropriate or necessary professional qualification necessary for the delivery of the service. (History: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040.)

Rules 08 through 29 reserved

VOCATIONAL REHABILITATION PROGRAM 37.30.1030

37.30.1030 REHABILITATION FACILITIES: POLICIES ON ESTABLISHMENT (1) The department may within its discretion financially participate in the establishment and development of rehabilitation facilities.

(2) The department does not financially participate in any of the following aspects of the establishment or development of rehabilitation facilities:

- (a) acquisition of land;
- (b) acquisition of buildings;
- (c) remodeling, alteration or expansion of buildings;
- (d) construction of buildings;
- (e) architect's fees;
- (f) site preparation;
- (g) initial fixed or movable equipment; or
- (h) works of art.

(3) The department does not participate financially in the establishment of work activity centers.

(4) Prior to the establishment of a rehabilitation facility, the department will certify that there is a need for the rehabilitation facility, that the establishment of the facility is consistent with the state rehabilitation facilities plan, and that the facility will be in compliance with all federal and state laws and statutes governing civil rights.

(a) In order to be approved by and to receive financial assistance from the department a rehabilitation facility must submit the complete plans, specifications, and costs of all construction, equipment, and related expenses for the proposed facility to the department for final approval.

(b) The certification by the state under this rule and ARM 37.30.1002 are not a guarantee of grants nor of purchases of services by the department. (History: 53-7-102, 53-7-203, 53-7-302, 53-7-315, MCA; IMP, 53-7-102, 53-7-103, 53-7-302, 53-7-303, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2005 MAR p. 2257, Eff. 11/11/05.)

Subchapters 11 and 12 reserved

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VOCATIONAL REHABILITATION PROGRAM 37.30.1301

Subchapter 13

Confidential Information

37.30.1301 CONFIDENTIAL INFORMATION (1) The confidentiality of client information will be assured in accordance with federal and state statutes and rules and with departmental policy. (History: Sec. 53-7-102, 53-7-203 and 53-7-302, MCA; IMP, Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff. 3/30/84; TRANS, from SRS, 1998 MAR p. 2040.)

(6) The hearing officer renders a written opinion, including findings and conclusions, within 30 days of final

submission of the case.

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(7) The hearing officer must reach a decision in the matter based on the provisions of the relevant state and federal statutory and rule authorities and of the state plan submitted by the vocational rehabilitation agency to and approved by the federal government.

(8) Appeal from a decision of a hearing officer is available as provided in ARM 37.5.334. Appeals of determinations under this chapter may not be made to the board of public assistance.

(9) The department adopts and incorporates by this reference the conciliation procedures, dated December 27, 2002, and published by the department as Policy E, "Counselor Determinations", of the Montana Vocational Rehabilitation Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. (History: 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315, 53-19-112, MCA; IMP, 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106, 53-19-112, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02; AMD, 2005 MAR p. 2257, Eff. 11/11/05.)

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37.30.1402

37.30.1402 PROVIDER CLIENT GRIEVANCES PROCEDURES

(1) Providers of vocational rehabilitation services must establish and maintain client grievance procedures.

(2) Any matter of grievance not adequately resolved between a provider of services and a client may be brought to the department for review and resolution. (History: Sec. 53-7-102 and 53-19-112, MCA; IMP, Sec. 53-7-102 and 53-19-103, MCA; NEW, 1985 MAR p. 1569, Eff. 10/18/85; TRANS, from SRS, 1998 MAR p. 2040.)

37.30.1403 FAIR HEARINGS: REVIEW OF FAIR HEARING DECISIONS (REPEALED) (History: Sec. 53-7-102, 53-7-206, 53-7-302, 53-7-315 and 53-19-112, MCA; IMP, Sec. 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106 and 53-19-112, MCA; NEW, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

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Subchapter 16

Extended Employment Program

Rule 01 reserved

37.30.1602 EXTENDED EMPLOYMENT SERVICES: OBJECTIVES

(1) The objectives of the extended employment program are:

(a) to facilitate the development of appropriate employment opportunities in community-based integrated job sites for persons with severe disabilities determined by the department to be in need of extended employment;

(b) to encourage community integration of persons with disabilities by developing community-based, extended employment positions; and

(c) to provide opportunities for persons with significant disabilities who cannot be readily absorbed through the competitive job market to participate in extended employment programs in Montana. (History: Sec. 53-7-102, 53-7-203, 53-7-206 and 53-7-302, MCA; IMP, Sec. 53-7-203 and 53-7-206, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02.)

37.30.1603 DEPARTMENT OF PUBLIC HEALTH
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37.30.1603 EXTENDED EMPLOYMENT SERVICES: RESPONSIBILITY
FOR FUNCTIONS (REPEALED) (History: Sec. 53-7-102, 53-7-203,
53-7-206 and 53-7-302, MCA; IMP, Sec. 53-7-203, 53-7-205 and 53-
7-206, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff.
3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS,
1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

Rules 04 through 07 reserved

37.30.1608 EXTENDED EMPLOYMENT SERVICES: EXTENDED
EMPLOYMENT COMMITTEES (REPEALED) (History: Sec. 53-7-102, 53-
7-203, 53-7-206 and 53-7-302, MCA; IMP, Sec. 53-7-203, 53-7-205
and 53-7-206, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff.
3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS,
1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

Rules 09 through 11 reserved

37.30.1612 EXTENDED EMPLOYMENT SERVICES: PROGRAM
REQUIREMENTS (REPEALED) (History: Sec. 53-7-102, 53-7-203,
53-7-206, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-203 and 53-
7-206, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff.
3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS,
1998 MAR p. 2040; REP, 2002 MAR p. 3628, Eff. 12/27/02.)

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37.30.1613 EXTENDED EMPLOYMENT SERVICES: ELIGIBILITY

(1) The department develops and maintains a prioritized waiting list from which applicants for extended employment services are drawn as funding allows.

(2) Applicants are selected to be served from the waiting list based on determination of eligibility date. The applicant available for services with the earliest determination date is offered the service.

(3) A person is eligible for the extended employment program if the person has:

(a) a significant disability;

(b) historically lacked the skills of independence and other skills so as not to have been competitively employed or, if employed, the employment has been interrupted or intermittent as a result of those disabilities; and

(c) been determined by the department to need the services of the extended employment program.

(4) Those persons eligible for comparable services provided by the department must fully utilize those services before they may be considered for eligibility for extended employment services. (History: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315, MCA; IMP, Sec. 53-7-203, 53-7-205 and 53-7-206, MCA; NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02.)

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37.30.1614 EXTENDED EMPLOYMENT SERVICES: SUPPORTED EMPLOYMENT REQUIREMENTS (1) Supported employment may be provided to a client who needs assistance in entering into competitive work in integrated work settings.

(2) Supported employment as an extended employment service may be provided only in an employment setting where:

(a) the person with disabilities is not part of a work group of other persons with disabilities and most co-workers are not disabled;

(b) the person with disabilities is part of a work group of no more than eight persons with disabilities and there is regular contact with persons who are not disabled and who are not providing support services to the persons with disabilities; or

(c) the person with disabilities works alone and is in regular contact with persons who are not disabled and who are not providing support services to the person with disabilities. (History: Sec. 53-7-206, MCA; IMP, Sec. 53-7-203 and 53-7-206, MCA; NEW, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040.)

37.30.1615 EXTENDED EMPLOYMENT SERVICES: SHELTERED EMPLOYMENT REQUIREMENTS (1) Sheltered employment as an extended employment service may be provided only in an employment setting where the employer is a sheltered employment provider and the employment setting is within a sheltered workshop or is a setting that is not a supported employment setting. (History: Sec. 53-7-206, MCA; IMP, Sec. 53-7-203 and 53-7-206, MCA; NEW, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040.)

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VOCATIONAL REHABILITATION PROGRAM 37.30.2501

Subchapter 25

Blind Vendors Program

37.30.2501 DEFINITIONS (1) "Act" means the Blind Vendors Act codified as part 4 of Title 18, chapter 5, MCA.

(2) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(3) "Blind vendor" means a person certified as a blind person for the purpose of this subchapter and who is operating a vending facility administered by the department.

(4) "Blind vendors program" means the program administered by the department for the purpose of providing to certified blind persons the business opportunities authorized by Title 18, chapter 5, part 4, MCA. The blind vendors program is administered in conjunction with the business enterprise program of the department.

(5) "Business enterprise facility" for the purpose of this subchapter means a vending facility administered by the department.

(6) "Certified blind person" means a blind person whom the department has determined is a blind person as defined in this subchapter, is in need of vocational opportunities, and is qualified to operate a vending facility.

(7) "Department" means the department of public health and

human services.

(8) "Federal property" means buildings or portions of buildings or other real property owned or leased by the federal government excluding military reservations upon which the department may administer vending facilities by an agreement entered into under the authority of the federal Randolph-Sheppard Act, as amended.

(9) "License" means the certification of a blind person provided for in 18-5-403, MCA, for the purpose of providing vocational opportunity through a state-administered vending stand.

(10) "Licensing agency" means the visual service division, department of public health and human services, state of Montana.

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(11) "Net proceeds" means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by such blind vendors).

(12) "Nominee" means a non-profit agency or organization designated by the state licensing agency through a written agreement to act as its agent in the provision of services to blind licensees under the state's vending facility program.

(13) "Other property" means all real property other than state or federal property as defined in this rule.

(14) "State property" means those buildings or portions of buildings or other real property owned or leased under a lease-purchase agreement, or in the case of a building, leased in its entirety by the state or agencies of the state that are utilized in the conduct of state matters and occupied principally by state employees. State property for the purpose of this subchapter does not include vocational institutions or institutions of higher education.

(15) "Vending facility" means an area and equipment inclusive of vending machines on state, federal or other property which is or may be utilized in providing a food, beverage, or other service to employees and other persons present on the property, and may include any of the following:

(a) shelters, counters, shelving, display and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment that is necessary for the vending of articles that are approved by the agency, or other authority having care, custody and control of the property in or on which the vending stand is

located;

(b) manual or coin operated vending machines or similar devices for vending the approved articles;

(c) cafeteria or snack bar facilities for the dispensing of approved foods and beverages.

(16) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include postage stamp machines or coin-operating telephones.

(17) "Vendor" means either a blind vendor or any person who is by contract temporarily managing and operating a business enterprise facility which is part of the blind vendors program.

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(18) "Vocational rehabilitation programs" means those programs provided for under the federal Randolph-Sheppard Act, as amended, and Title 53, chapter 7, part 3, MCA. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-401 through 18-5-416, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; TRANS, from SRS, 1998 MAR p. 2040.)

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37.30.2505 ESTABLISHMENT OF BUSINESS ENTERPRISE FACILITIES

(1) Upon written notification by an agency in control of state property or responsible for the construction or remodeling of state property that a vending facility is desired on the property, or, upon its own initiative, the department shall:

(a) survey the property (or blueprints, plans, and other similar, available information) to determine if the installation of a business enterprise facility for the blind vendors program is feasible and consonant with its vocational rehabilitation objectives; and if it so determined, provide for a business enterprise facility to be installed on that property by the department.

(2) State agencies which now have a vending facility not administered by the department as a business enterprise facility shall give notice to the department when any existing agreement relating to the management of that facility terminates. At that time the department may exercise its authority to administer that facility as a business enterprise facility.

(3) The department is responsible for designating business enterprise facility locations on state and other property for the purposes of the blind vendors program.

(4) An agency responsible for state and other property shall at the direction of the department alter the property to make it suitable for a vending facility.

(5) The installation, modification, relocation, removal, and renovation of vending facilities will be subject to prior approval and supervision of the on site official responsible for

the property and the department. The costs of relocation of vending facilities shall be paid by the initiator of the request.

(6) Additional vending facilities may not be installed on property having a business enterprise vending facility unless an agreement is reached between the agency and the department concerning the installation and operation of the competing vending facilities. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-411, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; TRANS, from SRS, 1998 MAR p. 2040.)

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37.30.2510

37.30.2510 ISSUANCE AND CONDITIONS OF CERTIFICATION

(1) In order to be eligible to be a certified blind person for the purposes of this subchapter, one has to be an accepted client of the vocational rehabilitation program.

(2) Criteria in the issuance of certification. Preference will be given to blind persons who are in need of employment for economic reasons and who are residents of the state of Montana, but in all instances certifications will be issued only to persons who meet the following criteria:

(a) the person has been determined to be blind as defined in ARM 37.30.2501(2) by the department;

(b) the person is a citizen of the United States;

(c) the person is at least 18 years of age;

(d) the person is determined by the department to be qualified to operate a business enterprise facility; and

(e) the person is determined by the department to be in need of vocational opportunities.

(3) List of eligibles for placement:

(a) Applications for a position as a blind vendor will be accepted from anyone who meets the cited criteria. A record will be maintained of those applying. From this list of applications the department will select those suitable for training.

(b) Applicants who have successfully completed the training program or who have otherwise been certified as

qualified blind vendors will be placed on the eligible list for placement in the following order:

- (i) applicants who reside in the geographical area where a vacancy occurs or a new facility is being established;

- (ii) substitute vendors who merit being placed as regular managers;

- (iii) newly trained vendors; these persons will be placed on the list in order of their certification for the program;

- (iv) former blind vendors who desire to return to the program and whose previous records do not preclude their return.

- (c) The final selection for placement of blind vendors will be the decision of the department.

- (4) Initial placement to be probationary:

- (a) An applicant selected for placement as a blind vendor will initially be on probationary placement for a period of 6 months.

- (b) The probationary placement is to provide for:

- (i) adjustment of the blind vendor to the requirements of the physical environment;

- (ii) adjustment of the blind vendor to the mental and physical requirements of a continuous work situation;

- (iii) amelioration of any training deficiencies;

- (iv) insuring that requirements of the building management can be satisfactorily filled.

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- (c) If during the probationary period the department determines that the probationary blind vendor is not successfully meeting the duties of facility operation or is unable to meet the requirements of the building management, the probationary appointment will be terminated unless extended at the discretion of the department.

- (5) Contracting:

- (a) The department will contract with certified blind vendors placed by the department for performance of their services.

- (i) The contracts will be on an annual basis.

- (b) Contract provisions will be in accord with these rules and may include other provisions as the department determines may be necessary for the conduct of the program, the furtherance of the services provided by the department to the vendor, and the assurance of the quality of services provided by the vendor. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-403, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; AMD, 1984 MAR p. 991, Eff. 6/29/84; TRANS, from SRS, 1998 MAR p. 2040.)

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37.30.2515 TRANSFER AND TERMINATION (1) If the transfer of a blind vendor from one stand to another becomes desirable or necessary, a transfer will be made only when the department, the blind vendors program and the blind vendor would benefit from such transfer. To be taken into consideration will be the vendor's capacity to perform the duties of a particular facility, relationship to the public as a result of the transfer, effect to the particular business enterprise facility, the tenure and earnings of the vendor involved.

(2) In the event of the inability of the blind vendor to fulfill his responsibilities, the department may forthwith assume the operation of the facility. When circumstances warrant such action, the blind vendor may be temporarily relieved of duties by the department.

(3) Termination:

(a) Certifications shall be issued for an indefinite period but may be terminated by the blind vendor giving 60 days written notice to the department if he desires to resign.

(b) Any certification issued to a blind vendor may be revoked by the department, by written notice when the department determines that the facility is not being operated in accordance with these rules and regulations, the terms and conditions

governing the permit with the building management, or the contract with the blind vendor.

(c) Any certification may be terminated or suspended, if because of improvement of vision, the blind vendor no longer meets the criteria as defined in this rule.

(d) Any certification may be terminated or suspended because of extended illness with medically documented diagnosis of prolonged incapacity of the blind vendor to operate a vending facility in a manner consistent with the needs of the location or other available locations in the program.

(e) The blind vendor shall expressly release the department, its agents or employees from any loss, injury, damage or expense which the vendor may suffer, sustain, or incur by reason of such termination.

(f) The 60 day written notice may be waived by mutual consent of all parties concerned. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-403, 18-5-411 and 18-5-415, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; AMD, 1984 MAR p. 991, Eff. 6/29/84; TRANS, from SRS, 1998 MAR p. 2040.)

Rules 16 through 19 reserved

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37.30.2520 EQUIPMENT, STOCKS AND INSURANCE (1) The department will provide each business enterprise facility with fixtures and equipment in such quantity and of such quality so as to give reasonable assurance of successful operation by the vendor. Funds for this purpose may be made available from federal and state allocations or appropriations, including set aside funds.

(a) The department shall retain the right, title, and interest to all facility equipment and leases. It shall have the authority to direct, control, transfer, and dispose of such equipment when necessary.

(b) The vendor will make no additions or reductions to the facility and its operation either in the form of equipment, fixtures, goods for resale, or facilities without first obtaining authorization from the appropriate agent of the department.

(2) The department will maintain or cause to be maintained all equipment in a safe and satisfactory working condition subject to the following:

(a) Replacement in lieu of repair shall be a decision of the department.

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37.30.2525 VENDOR RESPONSIBILITIES (1) The vendor shall receive all income derived from the operation of the business enterprise facility and any assigned vending machines after deducting the operational costs and charges mutually agreed upon. Income from vending machines on non-federal property in direct competition with the facility will be assigned to the vendor (a vending machine will be considered to be in direct competition with the business enterprise facility if it vends articles of a type authorized by the applicable license and is so located that it attracts customers who would otherwise patronize the business enterprise facility).

(2) The duties of the vendor shall be to:

(a) perform faithfully and to the best of his ability the necessary duties in connection with the operation of the facility in accordance with the department's rules and regulations, the terms of the permits, the agreement, and shall perform in the best interests of the blind vendors program as a whole;

(b) cooperate with duly authorized representatives of the

department in connection with their official responsibilities under the program;

(c) operate the facility in accord with all applicable health laws and regulations;

(d) furnish such reports as the department may from time to time require;

(i) submit the SRS-VSD-BE-1 by fifteenth of each month;

(ii) submit quarterly inventory by the fifteenth of January, April, July and October;

(e) follow generally acceptable accounting practices;

(f) take no action in the derogation of, or inconsistent with, the paramount right, title, and interest of the department to the facility, its equipment and the lease or agreement with the management of the property;

(g) maintain the highest standard of personal appearance, grooming and behavior so as to win and retain the respect of the clientele of the facility;

(h) pay cash for all merchandise or immediate payment upon receipt of billing;

(i) to report to the department in writing, as soon as practicable, the occurrence of any accident at this facility. This requirement is in addition to the vendor's duty to report any accident to the insurance carrier;

(j) to report to the department any claim or suit which may be brought against the vendor as the result of any accident at the facility. This requirement is in addition to the vendor's duty to report such information to the insurance carrier.

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(3) Employment of staff by a vendor:

(a) The vendor shall employ a sufficient number of employees so as to assure the efficient operation of the facility and to provide adequate service to the public. His relationship to this staff shall be the normal employer/employee relationship existing in private business enterprises.

(b) In the employment of permanent and temporary employees the vendor shall give preference to qualified legally blind individuals.

(4) Vacations and leaves of absence:

(a) Annual vacations may be taken by vendors in accord with accepted business practices. Vendors planning to take a vacation should select a substitute vendor, preferably a certified blind person, to assume responsibility for the operation of the facility. Substitute vendors shall be paid by the vendor. The selection of the substitute vendor is a

responsibility of the vendor but must be approved by the department. The department must be notified in advance of the period vacations are selected.

(b) Requests for extended vacation periods or leaves of absence for other purposes shall be presented to the department. These requests will be evaluated on their individual merits.

(5) Business relationships:

(a) With vendors;

(i) the vendor shall have a free choice of the vendors from whom he is to make his purchases, provided however, that such vendors are reputable.

(b) With customers;

(i) all business enterprise facilities are to be operated on a cash basis except in unusual circumstances warranting the extension of credit to meet specific recurring customer needs, and then only after prior approval by the department.

(c) With building officials;

(i) the vendor will comply with all requests concerning the operation of the facility that may be made by officials of the building in which the facility is located provided that such requests do not conflict with the certification agreement, the rules and regulations issued by the department and the contract. At no time should the vendor expect the building management or their employees to provide special services or favors.

(ii) When differences arise between the vendor and the building management, the vendor shall bring the matter to the immediate attention of the department for appropriate action.

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(6) The department shall in no way be obligated by any debts incurred by the vendor, other than those authorized in writing by the appropriate agent of the department. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-415, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; AMD, 1984 MAR p. 991, Eff. 6/29/84; TRANS, from SRS, 1998 MAR p. 2040.)

Rules 26 through 29 reserved

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37.30.2530 TRAINING OF BLIND VENDORS (1) The department will provide vocational and other training services to assist the individual in preparing for the operation of a vending facility, including personal and vocational adjustment, books, tools, and other training materials. These services shall be provided to blind individuals as vocational rehabilitation services under the Rehabilitation Act of 1973 (P.L. 93-112), as amended by the Rehabilitation Act Amendments of 1978 (P.L. 95-602). Such programs will also include on-the-job training in all aspects of vending facility operation and upward mobility training (including further education and additional training or retraining for improved work opportunities) for all certified blind persons. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-404 and 18-5-415, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83;

TRANS, from SRS, 1998 MAR p. 2040.)

Rules 31 through 34 reserved

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37.30.2535 DEPARTMENT'S SET ASIDE FUNDS (1) The department will set aside funds from the net proceeds of the operation of business enterprise facilities under the blind vendors program. To the extent that set aside funds are accumulated as provided for in (2) and (3), those funds may be used for the purposes of:

- (a) maintenance and replacement of equipment;
- (b) the purchase of new equipment;
- (c) management consultant services;
- (d) assuring a fair minimum of return to vendors; or
- (e) the establishment and maintenance of retirement or pension funds, health insurance contributions, paid sick leave

and vacation time, if it is so determined by a majority vote of blind vendors certified by the department, after providing each such vendor information on all matters relevant to such proposed purposes.

(2) The amount of net proceeds for set aside purposes will be computed and reported on the SRS-VSD-BE-1 and paid monthly.

(3) Each unit's set aside fee will be 5% of the net proceeds. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-406, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; AMD, 1984 MAR p. 991, Eff. 6/29/84; TRANS, from SRS, 1998 MAR p. 2040.)

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37.30.2540 NECESSARY COMPLIANCE (1) All vendors shall be responsible for acquainting themselves with, and conforming to all laws, ordinances, and governmental rules and regulations pertinent to the conduct and operation of a business enterprise facility.

(2) It shall be the responsibility of the vendor to apply to the appropriate authority to secure required licenses, permits and authorizations.

(3) While every assistance will be given the vendor by the department it shall be the responsibility of the vendor to

familiarize himself with the laws and ordinances relative to the operation of the facility and to file any necessary tax returns or other reports.

(4) This program will operate in compliance with section 80.4(b) of the regulations of the department of health, education and welfare (45 CFR, Part 80 effectuating Title VI of the Civil Rights Act of 1964). (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-404, 18-5-413, 18-5-415, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; TRANS, from SRS, 1998 MAR p. 2040.)

Rules 41 through 44 reserved

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37.30.2545 ORGANIZATION AND ELECTION - STATE COMMITTEE OF BLIND VENDORS (1) Committee members shall be elected at an annual meeting of all blind vendors.

(2) The committee shall consist of 3 blind vendors, who shall select a chairperson.

(3) Nomination may be made by any of the assembled blind vendors.

(4) Committee members shall be elected for a 2 year term

and may serve no more than 3 consecutive terms.

(5) The committee shall meet on an annual basis at a place within the state agreed on by them. Additional meetings may be called by the department or by the chairperson.

(6) Between meetings, functions of the committee will be carried on by individual members of the committee so designated. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-413, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; TRANS, from SRS, 1998 MAR p. 2040.)

Rules 46 through 49 reserved

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37.30.2550 FUNCTIONS OF COMMITTEE (1) The blind vendors committee may advise the department in all matters relating to the blind vendors program.

(2) Committee members shall be kept informed by the department of matters within its purview that are being considered for decision. The committee will receive written notice of and invitations to attend important discussion and

decision making meetings in these areas.

(3) The department has the ultimate responsibility of the administration of the blind vendors program and if the department does not adopt the views and positions of the committee it will notify the committee in writing of the decision reached or the action taken and the reasons therefor.

(4) The committee shall receive and transmit to the department any grievance at the request of a vendor, and serve as advocates for such vendor in connection with such grievances.

(5) The committee actively participates with the department in the development of training and retraining program for blind vendors.

(6) If an elected committee member is unable to complete his term on the committee, the chairperson shall appoint another qualified vendor to serve his unexpired term. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-413, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; TRANS, from SRS, 1998 MAR p. 2040.)

Rules 51 through 54 reserved

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37.30.2555 TEMPORARY OPERATION OF FACILITY BY THE DEPARTMENT (1) When a qualified blind vendor is unavailable to operate a vending facility administered by the department under the blind vendors program, the department may provide, through contract, for the temporary management of that facility by a

person other than a blind vendor. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-415, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; TRANS, from SRS, 1998 MAR p. 2040.)

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37.30.2560 CONTRACTS WITH VENDING COMPANIES (1) The department will negotiate all contracts with vending companies for the installation of vending machines.

(2) The vending company will be selected by competitive bid. Contracts with vending companies will stipulate the type of equipment, periods of service, quality of service, and the flat fees to accrue to the business enterprise program. A flat fee is an agreed upon monthly unit amount of payment on a per vending machine basis to the department or its agent for purposes of the set aside fund.

(3) The department will negotiate contracts with vending machine companies for the installation of vending machines in public and other buildings in which there is no competition with an existing business enterprise facility. Proceeds from these vending machines may be used, as determined by the department, as best benefits the blind vendors program.

(4) The vendor will be provided a list of assigned vending machines, their locations, and applicable contracts. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-416, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; AMD, 1984 MAR p. 991, Eff. 6/29/84; TRANS, from SRS, 1998 MAR p. 2040.)

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37.30.2565 DISTRIBUTION AND USE OF VENDING MACHINE INCOME

ON FEDERAL PROPERTY (1) Vending machine income from vending machines on federal property and other property which has been disbursed to the department by a property managing department, agency, or instrumentality of the United States under the vending machine income sharing provisions in section 395.8 of the Randolph-Sheppard Act of 1974 (PL 93-516) shall accrue to each blind vendor operating a vending operating facility on such federal property in an amount not to exceed the average net income of the total number of blind vendors within such state, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of blind vendors in the United States.

(2) No blind vendor shall receive less vending machine income than he was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

(3) No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a blind vendor.

(4) The department will retain vending machine income disbursed by a property managing department, agency or instrumentality of the United States in excess of the amount eligible to accrue to blind vendors.

(5) That income accrued for blind vendors will be disbursed quarterly to them by the department.

(6) Vending machine income retained by the department will be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind vendors, if it is so determined by the majority vote of the certified vendors, after each vendor has been furnished information on all matters relevant to such purposes; that any vending machines income not necessary for such purposes shall be used for one or more of the following; maintenance and replacement of equipment; purchase of new equipment; management services; and assuring a fair minimum return to vendors; and that any assessment charged to blind vendors shall be reduced pro rata in an amount equal to the total of such remaining vending machine income. (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-406, 18-5-413 and 18-5-416, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; TRANS, from SRS, 1998 MAR p. 2040.)

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(a) A blind vendor dissatisfied with the decision rendered after a fair hearing, may pursue that due process accorded by the Randolph-Sheppard Act (20 USC 107a). (History: Sec. 18-5-414, MCA; IMP, Sec. 18-5-404 and 18-5-405, MCA; NEW, 1983 MAR p. 657, Eff. 6/17/83; AMD, 1984 MAR p. 991, Eff. 6/29/84; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

Subchapter 26

Visual Medical Program

37.30.2601 VISUAL MEDICAL PROGRAM: PURPOSES (1) The purposes of the visual medical program are:

- (a) to prevent blindness;
- (b) to restore sight;
- (c) to provide appropriate treatment where loss of sight cannot be prevented or sight cannot be restored.

(2) The visual medical program though administered by vocational rehabilitation services is not a vocational rehabilitation program. (History: Sec. 53-7-302, MCA; IMP, Sec. 53-7-302, MCA; NEW, 1984 MAR p. 511, Eff. 3/30/84; TRANS, from SRS, 1998 MAR p. 2040.)

Rule 02 through 04 reserved

37.30.2605 VISUAL MEDICAL PROGRAM: SERVICES (1) Visual medical services are:

- (a) diagnostic services;
- (b) surgery and treatment services;
- (c) hospitalization services;
- (d) prosthetic appliances, if determined to be necessary in treatment;
- (e) transportation services; and
- (f) follow-up services. (History: Sec. 53-7-302, MCA; IMP, Sec. 53-7-302, MCA; NEW, 1984 MAR p. 511, Eff. 3/30/84; TRANS, from SRS, 1998 MAR p. 2040.)

Rules 06 and 07 reserved

37.30.2608 VISUAL MEDICAL PROGRAM: ELIGIBILITY
REQUIREMENTS (1) Eligibility requirements for the visual
medical program are:

(a) The person has an eye condition which needs the attention of an ophthalmologist or optometrist in order to prevent blindness, to restore sight or to treat an eye condition due to blindness.

(b) The person is not otherwise eligible for medical assistance from any other state or federal program including the vocational rehabilitation services program.

(c) The person must be financially in need due to the anticipated costs of the medical services he is to receive.

(i) A person who is above the cost of living standards provided for in ARM 46.10.403, may at the discretion of the department receive visual medical services if the costs of the treatment and eye care would result in that person's having inadequate financial resources to meet the relevant cost of living standards. (History: Sec. 53-7-302, MCA; IMP, Sec. 53-7-302, MCA; NEW, 1984 MAR p. 511, Eff. 3/30/84; TRANS, from SRS, 1998 MAR p. 2040.)

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